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Attorneys for Official Unsecured Creditors' Committee for USA
Commercial Mortgage Company

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEVADA

In re:

USA Commercial Mortgage Company
06-10725 – Lead Case

USA Capital Realty Advisors, LLC
06-10726

USA Capital Diversified Trust Deed Fund,
LLC
06-10728

USA Capital First Trust Deed Fund, LLC
06-10728

USA Securities, LLC
06-10729

Debtors.

Jointly Administered

Chapter 11 Cases

Judge Linda B. Rieggle Presiding

**Response To Motion For Payment Of
Proceeds Of Notes Secured By Deeds
Of Trust Without Reduction For
Netting**

Date: August 31, 2006

Time: 9:30 a.m.

Affecting:

.. All Cases

or Only:

× USA Commercial Mortgage Company

.. USA Capital Realty Advisors, LLC

× USA Capital Diversified Trust Deed Fund,
LLC

× USA Capital First Trust Deed Fund, LLC

.. USA Securities, LLC

The Official Unsecured Creditors' Committee for USA Commercial Mortgage Company opposes the Motion for Payment of Proceeds of Notes Secured by Deeds of Trust Without Reduction for Netting [DE 1061] for the reasons stated in the Committee's Response to Motion to Distribute Funds and to Grant Ordinary-Course Releases and Distribute Proceeds [DE 995] (substantive and procedural reasons for hold-backs), which



1 was supported by the Declaration of Edward M. Burr [DE 996]; and the Committee's
 2 Response to Supplement Brief and Request for Ruling on Issue of Law [DE 867]
 3 (procedural flaws in LePome request for an advisory opinion, as this Court has previously
 4 recognized), which are incorporated herein by reference.

5 In addition, the Committee has formally requested the Debtors to commence an
 6 adversary proceeding or proceedings to recover prepaid interest as a fraudulent transfer
 7 under Bankruptcy Code §§ 544, 548, 550 and applicable state law, or alternatively has
 8 authority from the Debtors for the Committee to commence such litigation. Debtors'
 9 temporary hold on the funds to enable later offsets is a reasonable and appropriate way to
 10 avoid the necessity of multiple, expensive collection proceedings later if the parties do not
 11 resolve their disputes over entitlement to the money.¹ Indeed, as the Court heard at one of
 12 the early hearings in this case, some [probably most] direct lenders prefer to have
 13 entitlement to funds determined before disbursements instead of being sued later in one or
 14 another capacity after receiving money from the estate.

15 Accordingly, the Committee requests that the motion be denied without prejudice at
 16 this time.

17 Dated August 15, 2006.

18 **LEWIS AND ROCA LLP**

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 20 By /s/ RC (#006593)

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 22 *Attorneys for Official Unsecured Creditors' Committee*
 23 *for USA Commercial Mortgage Company*

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 26 ¹ *Citizens Bank of Maryland v. Strumpf*, 516 U.S. 16, 18 (1995).